



February 25, 2019

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278 & CG Docket No. 18-152

Dear Ms. Dortch:

This *Ex Parte* Notice relates to three meetings on February 21 and 22 between several national consumer groups and different officials at the Federal Communications Commission (FCC) on the same subjects. In the first meeting on February 21, we met with Kristi Thornton, Karen Schroeder, Mark Stone, Kurt Schroeder and Richard Smith of the Consumer and Governmental Affairs Bureau. In the second meeting on February 21, we met with Commissioner Starks and his counsel Michael Scurato. On February 22, we met by phone with Zenji Nakazawa of Chairman Pai's office.

The consumer representatives attending included myself, my colleague Carolyn Carter, George Slover and Maureen Mahoney of Consumer Reports-Advocacy, Christine Bannon of the Electronic Privacy Information Center, Susan Grant of Consumer Federation of America, Linda Sherry of Consumer Action, and Ira Rheingold of the National Association of Consumer Advocates.

Additionally, at the meeting with staff of the Consumer and Governmental Affairs Bureau, two private attorneys attended who represent the plaintiffs in a case involving violations of the Telephone Consumer Protection Act (TCPA), by SGS, North America: Phil Borer and Christopher Jones.¹ They made their own presentation at this meeting, for which they will file their own *ex parte*.

¹ The most recent relevant decision in this case is *Carroll v. SGS N. Am., Inc.*, 2017 WL 4183098

At all three meetings, the consumer advocates discussed the following subjects:

1. How the FCC should deal with calls to reassigned numbers before the full implementation of the reassigned number database as recently ordered by the FCC. We walked through our *ex parte* filed on January 28, 2019 on the subject, available [here](#).²
2. Our comments on the SGS, North America petition, available [here](#).³
3. Our hope that the FCC will issue the required regulations implementing the 2015 Budget Act's changes to the consent requirement for calls collecting federal government debt, as we have advocated for in our comments on behalf of forty-one other national and state public interest groups and legal services organizations in response to the FCC's request for comments after the *ACA, Int'l* decision by the D.C. Circuit Court, filed on June 13, 2018, available [here](#).⁴
4. Our request that the FCC address the deliberate efforts by callers to evade coverage under the TCPA for telemarketing (and other) calls made on systems that include human clicking agents, when the sole reason these clicking agents have been inserted into the dialing process is to create the appearance of human intervention as a way of evading TCPA coverage. In this discussion, we referenced the recent *amicus* brief we filed in the case of *Glasser v. Hilton Grand Vacations Company, LLC*, on appeal to the Eleventh Circuit.⁵

We described how, in this case, Hilton established parallel, otherwise indistinguishable systems to conduct its telemarketing campaign. One system used fully automated dialers to call the residences of potential customers. The other system, at issue in this case, had a trivial distinction: human clicking agents. These human clicking agents did not participate in the

²*Ex Parte* filed by National Consumer Law Center, on behalf of its low-income clients and Consumer Reports, Electronic Privacy Information Center, Consumer Federation of America, and the National Association of Consumer Advocates, January 28, 2019, on the concepts of reasonable reliance in wrong number calls, *available here*, <https://ecfsapi.fcc.gov/file/1012758354298/Reasonable%20Reliance%20Long%20Ex%20Parte.pdf>

³Comments filed by National Consumer Law Center, on behalf of its low-income clients and Consumer Reports, Consumer Federation of America, and the National Association of Consumer Advocates, January 24, 2019, in opposition to the petition for declaratory ruling and retroactive waiver, by SGS North America, *available here*, <https://ecfsapi.fcc.gov/file/101251549225047/Comments%20on%20SGS%20waiver%20request-corrected.pdf>

⁴Comments filed by National Consumer Law Center, on behalf of its low-income clients and forty-one other national and state public interest groups and legal services organizations, responding to the FCC's questions following the D.C. Circuit's decision in *ACA, Int'l v. FCC*, June 13, 2018, *available here*, <https://ecfsapi.fcc.gov/file/106131272217474/Comments%20on%20Interpretation%20of%20TCPA%20in%20Light%20of%20ACA%20International.pdf>

⁵ 341 F. Supp. 3d 1305 (M.D. Fla. 2018).

calls, and simply had the job of repeatedly clicking a single computer button, which sends telephone numbers on an already created list to an automated dialer in another state. Each time the agent clicked, another number from the list was sent to the dialer. Like all automated dialers, the dialer at issue in this case placed the calls when no sales agent was on the line, and then the computer (not a human being) attempted to transfer the calls to Hilton's sales agents, who would try to sell Hilton's products to potential customers answering their cell phones.

The system employed to call cell phones used these clicking agents only in an attempt to avoid to the TCPA's prohibition against making autodialed telemarketing calls to a cell phone without the consumer's prior express written consent. But this system not only resulted in mass unwanted automated calls to cell phones; it also produced the same problems of dropped calls and delays after answering the phone that calls made by all autodialers produce.

At the meeting with Commissioner Starks and Michael Scurato, we also discussed many of the issues that we had addressed in our June 13, 2018 filing regarding the impact of the *ACA Int'l* decision (*see* footnote 4), as well as our reply comments filed on June 28 on the same topic, available [here](#).⁶ Additionally, we discussed our comments filed on October 24, 2018 with the FCC, accessible [here](#),⁷ regarding the *Marks* decision by the Ninth Circuit, as well as the *ex parte* that NCLC filed [here](#), regarding the definition of a an ATDS, and whether it covers smart phones.⁸

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you very much.

⁶ Reply Comments filed by National Consumer Law Center, on behalf of its low-income clients and forty-one other national and state public interest groups and legal services organizations, responding to the FCC's questions following the D.C. Circuit's decision in *ACA, Int'l v. FCC*, June 28, 2019, available *here*, <https://ecfsapi.fcc.gov/file/10628029912509/Final%20Reply%20Comments.pdf>.

⁷ Comments filed by the National Consumer Law Center, on behalf of its low-income clients, responding to the FCC's questions following the Ninth Circuit's decision in the case of *Marks v. Crunch Int'l*, October 17, 2018, available *here*, <https://ecfsapi.fcc.gov/file/1018245262122/NCLC%20Comments%20on%20Marks%20Decision.pdf>

⁸ *Ex Parte* filed by National Consumer Law Center, on behalf of its low-income clients and Consumers Union, Public Knowledge, Electronic Privacy Information Center, Consumer Federation of America, and the National Association of Consumer Advocates, regarding why ordinary smart phones do not meet the definition of an ATDS under the TCPA, November 13, 2018, available *here*, <https://ecfsapi.fcc.gov/file/11142097310498/ex%20parte%20on%20smartphones%20-%2011-13-18.pdf>

Sincerely,

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Ave, NW
Washington, D.C. 20036
msaunders@nclc.org
www.nclc.org